

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2019-0247

FREDDIE CARRASQUILLO, JR. and all other
similarly situated defendants in HAMPDEN COUNTY

v.

HAMPDEN COUNTY DISTRICT COURTS

RESERVATION AND REPORT

This matter came before the Court, Budd, J., on an emergency petition to vacate an order of a judge in the District Court. The order required the attorney in charge of the Committee for Public Counsel Services's public defender's office in Hampden County "to provide counsel to Courtroom 1 in the Springfield District Court every day who shall accept appointments in all cases as ordered by the Court to represent clients at arraignment, bail hearings, hearings pursuant to G. L. c. 123, § 35, and any other matter that the Court deems necessary." CPCS seeks vacatur of this order because, it argues, its attorneys' existing caseloads already exceed applicable limits, and further involuntary appointments would make it impossible to provide constitutionally effective

representation to indigent criminal defendants. CPCS represents that the shortage of counsel available in Hampden County to represent indigent criminal defendants has reached crisis proportions. The respondents, the Hampden County District Courts, do not appear to dispute the magnitude of the problem.

On June 28, 2019, I entered an Interim Order, agreed to by the parties, based on the protocol set forth in Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 118 (2004). That order remains in effect pending further order of this court. In that order, I directed the parties, among other things, to state their positions as to "whether the protocol outlined [therein], if extended indefinitely, would provide an appropriate solution going forward." In response, both sides have expressed the view that the protocol would not provide an appropriate long-term solution going forward. Neither side, however, has proposed any other steps that it contends the court has the authority to take, and should take, to provide an appropriate remedy other than continued application of the Lavallee protocol.

In addition, CPCS has filed motions to vacate those appointments of counsel that were made pursuant to the District

Court judge's order before the issuance of my Interim Order.¹ According to one of the motions, an attorney from the CPCS public defender's office has filed a notice of appearance under protest as to each such appointment. As it does with respect to the judge's underlying order, CPCS argues that it cannot provide constitutionally effective representation to the defendants in question due to its excessive caseload. Accordingly, it asks that the appointments mandated by the District Court judge's order be vacated and that the Lavallee protocol apply to each of those defendants as well. For their part, the respondents argue that applying the Lavallee protocol retroactively to individuals for whom an attorney was in fact appointed (albeit under protest) would result in some of these defendants being released, and possibly some of the charges against them being dismissed, despite the fact that they were represented. The respondents argue that this raises a serious public safety concern. On the record before me, I am unable to definitively resolve whether any defendant is being deprived of the effective assistance of counsel, and in my view, in any event, the question warrants the attention of the full court.

¹ These motions include a specific motion to vacate an appointment in Commonwealth vs. Garcia, 1923CR003619, and a more general motion to vacate all other such appointments.

Due to the obvious importance of the issues raised herein, I hereby reserve and report without final decision this entire case, including the petition to vacate the underlying order of the District Court judge and the motions to vacate the specific appointments of counsel made pursuant to that order, to the full court for determination on the record.² The record before the full court shall consist of:

1. All the papers filed before the Single Justice in SJ-2019-0247;
2. The Interim Order dated June 28, 2019;
3. This Reservation and Report; and
4. The docket sheet in SJ-2019-247.

In addition, to ensure that the factual record before the full court is adequate to enable the court to resolve the legal issues, to assist the court in understanding the implications of this case for the administration of justice, and to allow the court to provide an effective remedy, the parties shall prepare and file in the full court a comprehensive statement of agreed facts, including sufficient facts to resolve the motions to vacate appointments of counsel. The statement of agreed facts

² By reserving and reporting this matter, I do not intend to foreclose the full court from considering whether any defendant deprived of the effective assistance of counsel has an adequate remedy in the ordinary appellate process.

shall be prepared in time for inclusion in the parties' record appendix and, together with the specific papers listed in the preceding paragraph, will be part of the record of this case before the full court.³ The failure to agree on all of the necessary facts could impair the court's ability to resolve the matter; the full court will not be in a position to find facts or to resolve claims based on contested allegations and competing affidavits.

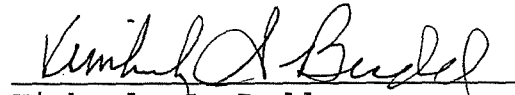
The petitioners shall be deemed the appellant, and the respondent shall be deemed the appellee. This reservation and report shall proceed in all respects with the Massachusetts Rules of Appellate Procedure. The parties shall consult with the Clerk of the full court to arrive at a briefing schedule that will allow this case to be heard at the full court's October, 2019 sitting, together with SJC-12648, Joseph Walsh & another vs. Commonwealth.

The parties shall be sure to explain in their briefs, among other things, their respective positions on what long-term solution to the Hampden County counsel crisis they think might

³ It shall be incumbent on the petitioners to draft the statement of facts initially for the respondents' consideration, unless the respondents indicate to the petitioners that they wish to undertake the drafting of the statement in the first instance.

be appropriate and within the court's power to impose, if not the Lavallee protocol.

By the Court,

A handwritten signature in cursive script, appearing to read "Kimberly S. Budd", is written over a horizontal line.

Kimberly S. Budd
Associate Justice

Entered: July 24, 2019